IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13733 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DHORAJI MUNICIPALITY - Petitioner(s)

Versus

GUJARAT PRADESH MUNICIPAL KARMACHARI MAHA SANGH - Respondent(s)

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Appearance :

MR PREMAL R JOSHI for Petitioner No(s).: 1.

NOTICE SERVED BY DS for Respondent No(s).: 1.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 09/08/2005

ORAL JUDGMENT

This Court has issued the Notice for final disposal. Though served, nobody appears on behalf of the respondent. Hence, this Court has no other alternative but to dispose of the Special Civil Application, ex-parte, on merits.

2. Rule. In this petition under Article 226/226 of the Constitution of India, the petitioner has challenged the legality and validity of the judgment and award passed by the Industrial Tribunal, Rajkot dated 18th March 2005 in Reference (IT) No. 150/92 by which the Industrial Tribunal has partly allowed the said Reference directing the petitioner to pay pay-scale and other benefits given to a Clerk to the respondent as if he is serving as a Clerk and the arrears to be paid at the rate of 50 per cent from 22nd April 1992. The Industrial Tribunal also directed the petitioner to seek necessary permission/approval to make the respondent workman as Clerk from the competent authority within the period of 3 months and to make him permanent as a Clerk and then to pay the pay-scale and other benefits to him as a permanent employee.

3. It appears from the record that the respondent workman was appointed as a Peon in the petitioner Nagarpalika in the pay-scale of Rs. 200-250. It appears from the record that it was the case of the respondent workman that though he was appointed as a Peon subsequently the work of Clerk was taken from him since 1976 and still the respondent was not paid the pay-scale of the Clerk and was paid the salary in the pay-scale of the Peon; it was an unfair labour practice and against the principles of 'equal pay for equal work'; therefore he raised an industrial dispute for getting the pay-

scale of Rs. 330-530, i.e., pay-scale of Clerk and to make him permanent as a Clerk and to pay all arrears; and the said Reference was referred to the Industrial Tribunal, Rajkot being Reference (IT) No. 150/1992. The said Reference was resisted by the petitioner Nagarpalika. It was submitted that the respondent workman was appointed as a Peon and thereafter the work of Clerk was being taken from him for different periods by giving him additional charge as and when work of Clerk was available. It was also further submitted that he was given the work of Clerk temporarily at different times and therefore there is no question of making him permanent as a Clerk more particularly when there are other senior peons working in the Nagarpalika, and therefore if the respondent workman is to be appointed as a Clerk the seniority of other employees will be affected. The Industrial Tribunal, Rajkot, vide its judgment and award dated 18th March 2005 partly allowed the said Reference by granting the relief and issuing directions which are stated hereinabove. Being aggrieved and dissatisfied with the judgment and award passed by the Industrial Tribunal, Rajkot, dated 18th March 2005 in Reference (IT) No. 150/1992, the petitioner Nagarpalika has preferred the present Special Civil Application under Article 226/227 of the Constitution of India.

4. Shri Premal Joshi, learned advocate

appearing for the petitioner has submitted that the Industrial Tribunal has misread the evidence and the deposition of the witness on behalf of the petitioner Nagarpalika as well as the written statement filed by the petitioner Nagarpalika to the effect that the petitioner Nagarpalika has admitted that the respondent workman is serving as a Clerk. It is further submitted that it was admitted by the petitioner Nagarpalika that from the respondent workman the work of Clerk was taken though not permanently and continuously but for different periods as and when his services as Clerk was required, and the Industrial Tribunal has misread the aforesaid statement on behalf of the petitioner Nagarpalika as if the respondent workman was given the work of Clerk continuously since 1976. It is also further submitted that the appointment of the respondent workman is as a Peon and for filling-up the post of Clerk the approval of the competent authority is required and that too after obtaining necessary permission the said post is to be filled-in either by way of direct recruitment and/or by way of promotion; there were other seniors to the respondent workman; and when the appointment of the respondent workman was as a peon and the respondent workman was not appointed as a Clerk the Industrial Tribunal ought not to have passed an order directing the petitioner to give the pay-scale of a Clerk as if the respondent workman is appointed as a permanent Clerk. It is also further submitted that even no direction could have been issued by the Industrial Tribunal

directing the petitioner Nagarpalika to get approval of appointing respondent workman as permanent Clerk and to pay all the benefits available to the permanent Clerk. It is therefore requested to allow the present Special Civil Application.

5. It is not in dispute that the appointment of respondent workman was as a Peon and that there is no appointment of respondent workman as Clerk. It is also true that the work of Clerk was being taken from the respondent workman for different periods, however not continuously. It appears from the record and the judgment and award passed by the Industrial Tribunal that the Tribunal has misread the written statement and the admission on the part of the petitioner Nagarpalika as if the respondent workman was given the work of Clerk since 1976 continuously. The post of Clerk is to be filled-in after obtaining necessary permission and approval from the competent authority either by way of direct recruitment or by way of promotion and if the same is to be filled in by promotion then it should be on seniority basis. It is the case of the petitioner Nagarpalika that there are other peons senior to the respondent workman working in the Nagarpalika. Considering the fact that appointment of the respondent workman was as a Peon who was never appointed as a Clerk, merely because the work of Clerk was being taken from him from time to time the respondent workman is not entitled to be appointed as a Clerk on permanent

basis and/or he is not required to be paid the salary/wages in the pay-scale as Clerk. At the most, the respondent-workman is required to be paid some extra charges or wages for the period for which he has worked as a Clerk. Even no direction can be issued directing the petitioner Nagarpalika to obtain permission from the competent authority and to appoint the respondent workman as a permanent Clerk straightway and to give the pay-scale and other benefits available to a permanent employee. Such a direction is nothing but exercising the jurisdiction not vested in it. However, it is also required to be considered that even it is admitted by the petitioner Nagarpalika that the work of Clerk was being taken from the respondent workman for different periods. Under the circumstances, the respondent workman would be entitled to the salary/wages paid to a Clerk on the principle of 'equal pay for equal work'. Therefore the judgment and award passed by the Industrial Tribunal is modified to the aforesaid extent.

6. For the reasons stated hereinabove, the judgment and award passed by the Industrial Tribunal, Rajkot dated 18th March 2005 in Reference (IT) No. 150/1992 is modified to the extent that the respondent workman would be entitled to the wages which were paid to other Clerks for the period for which the work of Clerk was being taken from him. Rest of the directions issued by the Industrial

Tribunal in its aforesaid award is hereby quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

RMR.